programming. That market is currently highly competitive.[79] No one firm has a sizable share of purchasers' total expenditures on video programming, and nothing even remotely approaching market power on the buying side of the video program production market could be achieved by any firm, even if were to acquire a station in every local television market. Indeed, as the Joint Economic Study observes, the number of full-power commercial television stations in the United States is so large that if eight hypothetical group owners each owned one station in local markets with a combined population of 80% of the country's television households, there would still be a sufficient number of stations left over for nine more groups to achieve 24% coverage of television households. The result would be 17 firms, the smallest of them at least as large in its coverage as the largest station groups that exist today. Measured by coverage, the HHI for broadcast television stations alone in the absence of national ownership caps cannot exceed 831.[80] The effect that the unlikely emergence of such large groups would have on concentration in this market would be miniscule.

The Joint Economic Study notes that a station group which purchases rights to a program for a number of its stations in a single transaction (but, of course, less than national rights) may be able to obtain that program on more favorable terms than would be available to a single-station purchaser.[81] This result, however, is attributable to cost-saving efficiencies that the group purchaser is able to offer to the program's distributor, rather than to any market power on the part

---

[79] The national video program market is currently at a low level of concentration, with an HHI estimated roughly at less than 800 when program expenditures are broken out by individual firms. Joint Economic Study at 42-43.

[80] Id. at 61.

[81] Id. at 41-42.

of the station group. As the Study observes, the existence of such efficiencies in program distribution are beneficial to the public and to advertisers, and should be encouraged, not obstructed, by public policy.

B. Repeal of the National Rules Would Have No Adverse Effect on Diversity.

The fact that a media outlet located in a particularly community is or is not jointly owned with sources in other markets has no bearing on the diversity of viewpoints available to that community. Accordingly, as the Commission observed in 1984, "a national [television station ownership] rule is irrelevant to the number of diverse viewpoints in any particular community."[82] In its 1992 decision relaxing limits on radio station ownership, the Commission similarly stressed that

> "[w]ith respect to viewpoint diversity, the immediate frame of reference for most consumers is the local area in which they live and work. In other words, listeners in San Francisco, St. Louis and Philadelphia each perceive program and viewpoint diversity in terms of the ideas available to them locally, regardless of what ideas are available in other broadcast markets."[83]

Repeal of the national ownership rule can have no adverse effect on diversity in any intellectual market.

C. Repeal of the National Rules Would Provide Many Public Benefits.

It is argument enough against preemptive structural limits on television station ownership

---

[82] Multiple Ownership, supra, 100 F.C.C.2d at 25.

[83] Radio Ownership, supra, 7 FCC Rcd at 2766.

that market conditions have rendered such limits unnecessary for the protection of competition or diversity. It is also the case, however, that repeal of the national ownership rules is likely to promote the Commission's statutory goal of promoting "the best practicable broadcast service" to the public. The more efficient grouping of stations that would be permitted by repeal would promote marketplace economies which, in the highly competitive environment of broadcasting, are most likely to translate into improved programming and generally enhanced use of the broadcast spectrum. The probable benefits of repeal have both economic and First Amendment dimensions.

1. Enhancing the Viability of Free, Over-The-Air Television.

The continuing fractionalization of the television audience, and the increasing competition from cable and other rivals, underscore the importance of allowing television broadcasters to achieve effective allocation of resources and to realize the efficiencies that group ownership can provide. Like radio station owners, television broadcasters should be allowed the opportunity "to enjoy greater efficiencies that redound to the benefit of the public and affirmatively serve [the Commission's] competition and diversity goals."[84] The Commission has noted many respects in which group ownership of stations provides opportunities for cost savings through the sharing of various services and other economies.[85] The CBS Owned television stations have realized such savings in the following areas:

---

[84] Radio Ownership, supra, 7 FCC Rcd at 2770.

[85] See, e.g., Multiple Ownership, supra, 100 FCC 2d at 45; Second Report and Order, Amendment of Broadcast Multiple Ownership Rules, 4 FCC Rcd at 1741, 1746-47 (1989) ("TV-Radio Cross-Ownership").

- joint financial, legal, research and other administrative and support operations;
- joint purchases of equipment (e.g., cameras and sound equipment), with discounts that have ranged from 18 to 28 percent;
- joint purchases of services (e.g., programming consultants, ratings services);
- joint negotiation for exhibition rights to syndicated programming;
- fluidity in the allocation of scarce human resources, with frequent movement of on-air and managerial personnel among various CBS Owned stations, and in the allocation of used equipment;
- self-representation of the CBS Owned stations in the national spot sales market.

In addition, each CBS Owned station benefits from the experience and expertise of CBS management and personnel -- a benefit of group ownership which permits skilled and successful television owners to bring their talents and resources to more markets, improving the capabilities and performance of additional stations.[86] We believe that the extension of these cost-saving efficiencies throughout the broadcast television business can contribute significantly to its ability to compete for first-quality programming with subscriber-funded rivals.

2. Improved Program Quality.

The Commission observed in 1984 that group owned stations have tended to do "a superior job of responding to viewer demand for news,"[87] as compared with individually owned

---

[86] Multiple Ownership, supra, 100 FCC 2d at 45.

[87] Id. at 31.

stations, and concluded that the efficiencies provided by greater group ownership would result in various service improvements to the community, particularly with respect to news and informational programming.[88] The Commission has repeatedly reaffirmed these findings.[89]

From the earliest days of television, the CBS Owned television stations have emphasized news and public affairs in their programming schedules. Each station's continuing substantial investments of time and of human and financial resources in news and public affairs demonstrate that this commitment remains strong today. But the value of group ownership is also reflected in other forms of programming. Multiple station licensees may call on the combined economic resources of a station group to support original programming production, and a variety of other programming services. The sharing of personnel resources within a station group enhances each station's access to program production expertise and can produce overall cost reductions which permit resources to be redirected to programming. The development of the hourlong daily informational program DAY AND DATE, recently undertaken by the Westinghouse television stations in cooperation with the CBS Owned stations, illustrates the kind of in-house programming that can be supported by a station group's access to an aggregate potential audience

---

[88] Id. at 44-46.

[89] See, e.g., TV-Radio Cross-Ownership, supra, 4 FCC Rcd at 1746-50 (discussing the many public interest or consumer welfare benefits of group ownership). In its recent relaxation of national and local ownership limits for radio, the Commission relied heavily on its experience with television stations for its conclusion that greater consolidation could increase the variety of programming available to the public, including local news and public affairs programming. Radio Ownership, supra, 7 FCC Rcd at 2768. Indeed, the Commission observed that its experience with group-owned television stations "suggests that [a] higher investment in news is a function of the benefits of scale, and portends that relaxation of the national [radio station ownership] rule will provide the public with more news and informational programming." Id. at 2769.

of significant size and to significant financial and personnel resources.

3. New Entry by Networks.

Station groups have been the indispensable nucleii of both old and new broadcast television networks, assuring a minimum level of clearances for network programming and providing a base of personnel and economic resources. The Commission has long recognized that ownership of stations in major markets is a vital component of a healthy and effective television network. Even in its 1941 Chain Broadcasting Report, the Commission observed that network-owned stations in larger markets

> "make available a substantial minimum audience for network sustaining programs...[and] permit the networks to experiment with new techniques of program production and new ideas in program content."[90]

And in 1954, a time of far less diversity and competition in the television marketplace, the Commission observed that:

> "[t]he ownership of broadcast stations in major markets by the networks is an important element of network broadcasting. Our nation-wide system of broadcasting as we know it today requires that some multiple ownership of broadcast stations be permitted."[91]

The establishment of the Fox network and the introduction of the Warner Brothers and United/Paramount networks have been accomplished by, or in partnership with, large station groups.[92] The result, of course, has been intensified competition in national and local markets.

---

[90] Report on Chain Broadcasting, Commission Order No. 37, Docket No. 5060, at 66-67 (1941).

[91] Amendment of Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations, 43 FCC 2797, 2801 (1954).

[92] The United Paramount Network is a partnership of Viacom/Paramount and the Chris-Craft/United station groups. The WB Network is a partnership between Time Warner and the Tribune Station group.

Permitting larger groups to form can only encourage this trend, and may well lead to the entry of new national and regional programming services.

IV. THE DUOPOLY RULE

The duopoly rule is intended to promote competition and diversity in local markets by prohibiting television stations serving the same local area from being commonly owned. (¶105)[93] Since the rule's adoption for television in 1940, there has been a stunning increase in the number of television stations serving local markets throughout the United States, and an even greater increase in the availabilty of substitutes for broadcast television in every local product market in which television stations compete. The current rule, which prohibits overlaps in the Grade B contours of co-owned stations, is far broader than necessary to accomplish the rule's objective, and thus often constricts ownership patterns that would promote broadcast efficiency without any adverse impact on competition or diversity in any local market. In this proceeding, the Commission proposes at least to change the prohibited contour overlap from Grade B to Grade A (¶¶ 116-117), and seeks comments on a variety of other possibilities for relaxation of the rule or granting case-by-case waivers. (¶¶ 118-120)

A. The Existing Duopoly Rule Is Overbroad.

Before it was amended in 1964, the duopoly rule prohibited common ownership of

[93] See Genesee Radio Corp., 5 FCC 183, 186 (1938), where the Commission first declined to license co-ownership of radio stations in a single market, explaining that, under co-ownership, "[t]he two stations would not be engaged in actual or substantial competition with each other in the rendering of service."

stations with "substantially the same service area."[94] Believing that this standard was too vague to be enforced without elaborate case-by-case findings, in 1964 the Commission substituted the current Grade B contour overlap standard for defining impermissible same-market co-ownership.[95] The overbreadth of the current rule derives principally from the fact that the true geographic arena of competition for a broadcast television station is its DMA. Indications that the marketplace has unambiguously established the DMA as the functional definition of a local television market include, among others, the following:

- Ratings data for broadcast television stations are complied by the Nielsen Company on the basis of the 211 DMAs, because Nielsen -- the established authority on audience measurement in the television business -- defines them as the nation's local television markets. Viewing patterns and other factors are regularly re-evaluated by Nielsen for the purpose of making periodic adjustments in the geographic boundaries of DMAs in order accurately to describe economically valid boundaries for local television markets.

- It is the DMA-based ratings data which is used by local advertisers to make their time-buying decisions on local broadcast stations. For this reason, stations located in the same DMA compete against each other; stations located in different

---

[94] Rules and Regulations Governing Experimental Television Broadcast Stations, 5 Fed. Reg., 2382, 2384 (1940).

[95] Report and Order, Amendment of Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, 45 FCC 1476 (1964), on reconsideration, 3 RR 2d 1554 (1964).

DMAs do not.

- Networks generally have one affiliate in each DMA. It is in a network's interest to avoid duplicating coverage of a local television market with more than one affiliate, since that duplication increases the network's liability for affiliate compensation payments without increasing the network's audience exposure. It is quite telling, then, that while Grade B contour overlaps among the affiliates of each of the three original networks frequently occur, it is quite unusual to find more than one affiliate of a particular network in any one DMA.[96]

- The network non-duplication protection granted by the CBS Television Network to its affiliates covers only that portion of the zone permitted by the Commission's rules as falls within the station's DMA.[97]

Broadcast television stations may have viewers outside their DMAs, but they do not compete for viewers outside their DMAs. Their programming is targeted to the viewers inside their DMAs because these are the only viewers that advertisers will pay to reach. Since a station's Grade B contours frequently extend beyond the geographic borders of its DMA, the

---

[96] Thus, excluding satellite stations, there are only three DMAs in which the CBS Television Network has more than one affiliate.

[97] The Commission's rules generally limit the area in which network non-duplication protection may be granted to a 35-mile zone around the reference points of a station in the top 100 markets, or a 55-mile radius from the reference points of a station in other markets. 47 C.F.R. §76.92 (g). These zones are generally, but not always, smaller than a station's DMA.

duopoly rule's prohibition on Grade B contour overlaps between co-owned stations frequently bars co-ownership of stations that do not compete with each other in any respect. The overbreadth of the rule thus impedes efficiency with no compensating benefit to the public.

At a minimum, the duopoly rule should be cut back to a breadth congruent with its underlying purpose. This may be accomplished by prohibiting Grade A, rather than Grade B, contour overlaps, since stations with overlapping Grade A contours are far more likely to be actual competitors. It may also be accomplished by providing that stations may be co-owned if they are not located in the same DMA, <u>or</u> if they are located in the same DMA but do not have overlapping Grade B contours (the latter provision to take account of those situations where geographically large DMAs are served by a number of stations that cannot all be received over-the-air in a significant number of the same homes.) The Joint Economic Study demonstrates that there is no market in which broadcast stations compete that would be adversely affected by a reduction in the duopoly rule's prohibited contour overlaps so as to permit common ownership of stations in adjacent DMAs.

With respect to the delivered video programming market, stations have little or no economic incentive to compete for audiences outside their DMAs, and focus their programming efforts exclusively on attracting audiences within them. This is because, in every local market, television advertising time is bought and sold on the basis of Nielsen data which measures station audiences by DMA. Since stations in adjacent DMAs do not compete with each other to attract audience, co-ownership of such stations cannot reduce competition in the delivered video program market.

Similarly, stations in adjacent DMAs do not compete in the sale of local advertising time, which is bought and sold on the basis of DMA-specific ratings data. The reliance on DMA-based data is virtually universal for the reason that advertisers find this data to be the most useful in anticipating the economic effects of their broadcast advertising. Exposure of their commercials beyond their DMAs is of little value to them since the consumption patterns of people living in another DMA are likely to be focused on the commercial centers and retail chains of that other DMA. And advertisers who are interested in a much smaller area of exposure than the DMA are unlikely to choose broadcast television at all, since it is not efficient for them to pay to reach a broadcast television station's entire audience.[98]

Also, in the video programming market, co-ownership of television stations in adjacent DMAs has no bearing on concentration among buyers in the market for national exhibition rights. And because stations in different DMAs do not compete against each for local exhibition rights, common ownership of stations in different DMAs, whether adjacent or otherwise, has no bearing on buyer concentration in local markets for video programs either. Television stations are effectively precluded from seeking exclusive exhibition rights to programming beyond their DMAs by Commission rules.[99] And a television station stands to receive no economic benefit from audience it may attract outside its DMA because advertising time on the station is sold on the basis of its audience size within its DMA. Therefore, a station would have no economic

---

[98] Likewise, the particular locations of commonly-owned television stations -- i.e., whether they are located in adjacent or widely separated DMAs -- has no bearing on the extent of their participation in the national spot sales "market," since national spot advertisers make their purchases on a DMA basis as well. Accordingly, no matter what the definition of the national advertising product market, concentration in that market cannot be affected by permitting greater co-ownership of stations in adjacent DMAs.

[99] Section 73.658 (m) of the Commission's rules generally prohibits the acquisition of exclusivity rights that would bar the licensing of the same program to another station located in a community of license more than 35 miles away -- a radius which generally falls short of covering a station's own DMA, much less an adjoining one.

incentive to seek to tie up program exhibition rights outside its DMA, even if it could legally do so.

In 1984 the Commission rescinded the regional concentration of control provisions of its national ownership rules, recognizing that there was no public interest in preventing the co-ownership of different-market broadcast stations located within the same region.[100] The Commission found that "th[e] substantial rise in the multiplicity of media voices considerably attentuates both the diversity and economic competition justifications underlying our regulatory limitation of multiple ownership on the regional level."[101] The logic of that decision, we believe, calls for the Grade B contour overlap standard to be cut back at least to the limits of the DMA. Indeed, in the matter of Capital Cities' acquisition of ABC, which presented the most prominent modern case in which the Commission has been required to consider whether to grant a waiver of the duopoloy rule -- there, for a Grade B contour overlap between WABC-TV, New York, and WPVI-TV, Philadelphia -- the Commission emphasized that the overlap was "not so large as to require a finding that [the stations] 'serve substantially the same area.'" In granting the waiver, the Commisssion stressed that

> "[t]he fact remains that despite the resulting overlap, WABC-TV and WPVI-TV indeed serve separate and distinct markets, each with particularly individual service needs and responsibilities which are met by each station's local programming."[102]

---

[100] Report and Order, Repeal of "Regional Concentration of Control" Rules, 101 FCC 402 (1984), recon. denied, 58 RR 2d 119 (1985). The regional concentration of control provisions of the national ownership rules prohibited (with limited exceptions) the common ownership, operation or control of three commercial AM, FM or television stations where any two were located within 100 miles of the third and there was a primary service contour overlap between any of the stations.

[101] Id. at 410.

[102] Capital Cities Communications, Inc., 59 RR2d 451, 465 (1985). There are many other situations in which stations licensed to two different communities may have Grade B

There is no reason that this same reasoning should not apply to every overlap between stations in different DMAs.

B. Same-Market Co-Ownership of Television Stations Should Be Permitted Where There Has Been A Sufficient Public Interest Showing.

As discussed above, the Joint Economic Study demonstrates that if appropriate market definitions are used, two of the local markets in which local television stations compete with each other -- local delivered program markets and local advertising markets -- are at low to moderate levels of concentration.[103] Although local markets in another potentially relevant category -- the local market for exhibition rights to video programming -- may be more concentrated except in the largest DMAs, collusive behavior in this market would be very difficult to coordinate.[104] At the same time, the Commission has long recognized that many efficiencies may result from joint station ownership,[105] including shared studios and transmitters; consolidated accounting, billing, payroll and other administrative functions; joint sales force and advertising and promotion staffs; shared newsgathering; and access to a variety of volume discounts from vendors. Taken together, these circumstances militate strongly in favor of permitting same-market joint ownership in appropriate circumstances.

---

contour overlap but nonetheless clearly serve "separate and distinct markets" -- for example, Boston-Providence, Chicago-Milwaukee, Los Angeles-San Diego and Washington-Baltimore.

[103] Joint Economic Study at 15-17, 29-32.

[104] See discussion at pp. 36-37, supra; Joint Economic Study at 46-47.

[105] See, e.g., First Report and Order, Amendment of Broadcast Multiple Ownership Rules, 4 FCC Rcd 1723, 1728 (1989); (Multiple Ownership ("Duopoly")); TV-Radio Cross-Ownership, supra, 4 FCC Rcd at 1746-51; Multiple Ownership, supra, 100 FCC 2d at 31.

In considering the Commission's then-pending proposal to relax the duopoly rule for radio (Docket 87-7), the Federal Trade Commission staff, having examined existing AM-FM combinations, noted that there were many cost efficiencies in these joint operations that seemed to have potential application as well to AM-AM and FM-FM combinations.[106] And in the 1992 proceeding in which the FCC decided to liberalize the radio duopoly rules by permitting co-ownership of as many as two AM and two FM stations in the largest markets, and up to three radio stations in even the smallest markets, the Federal Trade Commission made an even stronger finding of the benefits of permitting common ownership of stations in a single market:

> "FTC specifically asserts that common ownership of radio stations leads to greater efficiencies, including cost savings in administration and overhead, promotion, equipment and programming....FTC also indicates that a case-by-case analysis of market conditions at the time the Commission reviews a new application should be adequate to prevent the creation of undue market power."[107]

Indeed, the FCC went on to find that a reasonable potential existed for jointly operated radio stations to achieve as much as ten percent cost reduction.[108] While the brief period that radio has operated under the liberalized rule may not provide enough experience to determine whether this forecast was accurate, it is notable that the marketplace, by responding with significantly increased investment in radio, appears to anticipate that substantial efficiencies will be achieved by increased co-ownership.

In general, while radio-television and radio-radio combinations clearly present cost-

---

[106] Multiple Ownership ("Duopoly"), supra, 4 FCC Rcd at 1725. (FTC staff "asserted that its statistical study of the efficiencies associated with the joint ownership of AM-FM combinations suggests that there may also be efficiencies associated with the joint ownership of multiple AM or multiple FM stations in the same area.")

[107] Radio Ownership, supra, 7 FCC Rcd at 2775, n. 91 (1992).

[108] Id. at 2775.

savings opportunities, the greatest economies in common ownership could be achieved through the joint operation of two television stations in a single market. That is because television stations are the most expensive to operate, and much of what is expensive about them -- equipment, talent and expertise -- can be shared, without abridgement of the editorial independence of each outlet, and without risk to the vitality of competition in any relevant market.

As discussed above, the Commission should at a minimum relax the duopoly rule so as to allow common ownership of television stations which serve different markets and therefore do not compete in any meaningful sense. Given the potential benefits of joint operation, however, we would also urge the Commission to amend the rule to permit common ownership of television stations in the same market where a showing can be made that such common ownership would promote efficiency without significantly threatening competition or diversity. Such a showing might be made, for example, with respect to the common ownership of two stations in a large market, or where special circumstances exist, such as the distressed condition of one or both of the stations proposed for common ownership. In any event, we respectfully submit that the Commission's rules should not foreclose broadcasters from realizing the clearly beneficial efficiencies of joint operation if it can be shown that such benefits may be achieved at no unreasonable competitive cost.

V. THE "ONE-TO-A-MARKET" RULE

The "one-to-a-market" rule generally prohibits the owner of a television station from owning radio stations in the same local market. In this proceeding the Commission suggests two alternative proposals -- repeal of the rule (relying on intra-service local ownership rules alone) (¶131), or the adoption of a threshold number of separate broadcast "voices" which must remain after a proposed cross-ownership is approved (¶132). The national product markets posited by the Commission in the Further Notice are essentially irrelevant to the rule,[109] and there is no local product market whose competitiveness would be threatened by permitting co-ownership of radio and television stations. Under these circumstances, CBS urges that repeal or substantial liberalization of the rule is fully justified.

Insofar as the Further Notice tentatively proposes to describe the local "delivered video programming" market in which broadcast television station compete for audiences as one consisting only of broadcast television stations and cable programming, it could not by definition be affected by a rule change allowing a greater degree of television-radio cross-ownership. A broader product market, however, might well include radio stations as competitors of television stations for audiences. Under such a definition, the radio-television cross-ownership rule would have theoretical relevance to concentration in this market. But a standard of substitutability that would place radio in the same market for audiences as television would also encompass numerous other non-video alternatives, such as newspapers, magazines, books, computer programs, audio recordings and possibly theatrical films and live exhibitions. And any local product market encompassing both radio and television stations as competitors for audience would be extremely unconcentrated, and could not possibly justify any structural prohibition on radio-television co-ownership.

---

[109] Even if the Commission's hypothesized national video advertising market were expanded to include both television and radio national spot sales, there is no sense in which ownership of radio and television stations in the same DMA -- as opposed to different DMAs -- alters a firm's role in either national spot market. Also, since radio stations do not purchase video programming, co-ownership of radio and television stations is irrelevant to concentration in that market.

With respect to local advertising, the Joint Economic Study demonstrates that an appropriately broadly defined market is extremely competitive in each of five illustrative DMAs.[110] A narrower definition of the market also produces findings of low to moderate concentration in most markets.[111] Only under the unduly narrow product market definition proposed in the Further Notice do elevated HHI levels appear in the three smaller DMAs.[112] For reasons discussed above, we believe that the case for a broader product market definition is compelling.[113]

The Joint Economic Study also measures concentration in each of the five illustrative DMAs after two hypothetical mergers: one combining revenues of the median-revenue television station, the median revenue AM station and the median revenue FM station in the DMA; and the second merger adding to this TV/AM/FM combination the revenues of the DMAs next largest AM and next largest FM station, to produce a hypothetical firm owning a television station and four radio stations within each DMA. The effect on HHIs of the three-station merger and of the five-station merger was in both cases minimal for a broad or

---

[110] Joint Economic Study at 30-32. As noted above, see pages 50-53, supra, the DMA is the appropriate geographic area for assessing competition faced by broadcast television stations in local advertising markets since stations are rated according to the size of their audience within their DMAs, and such DMA-based ratings are universally used by advertisers as the basis for their time-buying decisions.

[111] Removing direct mail and miscellaneous advertising, so that the market embraces the product list proposed in the Further Notice -- i.e., broadcast and cable television, radio and newspaper -- plus outdoor and yellow pages, the results are still low or moderate concentration in all five of the DMAs if based on the capacity measure of all advertising revenues, and low to moderate in every DMA but one if based only on local advertising revenues. Joint Economic Study at 32.

[112] Id. Even under that restrictive definition, New York, with a local-revenue HHI of 722 and an all-revenue HHI of 703, is at a low concentration level, and Cleveland, with a local-revenue HHI of 1370 and an all-revenue HHI of 1250, is at a moderate concentration level.

[113] See discussion, pp. 32-33, supra.

moderately wide product market defintion.[114] Even under the narrow product market definition proposed in the Further Notice, the hypothetical mergers raised HHIs by 20 points or less in two markets, leaving both well under the 1800 level.[115]

We submit that, properly defined, there are few if any local advertising markets in the United States where formation of radio-television combinations could reduce the vitality of competition. The market conditions summarized above and in the Joint Economic Study demonstrate that there is no justification for the retention of any preemptive bar to radio-television cross-ownership, and that application of the "incipency" standard of Section 7 of the Clayton Act will serve to protect against even the remote possibility of an anti-competitive radio-television combination in those rare situations where local advertising market concentration may be found.

In adopting the radio-television cross-ownership rule in 1970, the Commission assumed, as a self-evident proposition, that it was "to be guided by the sound public policy of placing into many, rather than few, hands the control of the powerful medium of public communication."[116] Even at that time, however, the Commission provided that the one-to-a-market bar should apply "unless some other relevant public interest consideration is found to outweigh the importance of diversifying control."[117]

In 1989, the Commission relaxed the rule's application by adopting a flexible waiver

---

[114] Joint Econmic Study at 98.

[115] Id.

[116] First Report and Order, Multiple Ownership of Standard, FM and Television Broadcast Stations, 22 FCC 2nd 306, 310 (1970).

[117] Id. at 311.

approach. Under this approach, a radio-television combination would presumptively qualify for a waiver if it involved (i) one of the top 25 television markets, with at least 30 separately owned broadcast stations, or (ii) a "failed" station that was inoperative or in bankruptcy proceedings.[118] Waiver requests for radio-television combinations in which these circumstances were not present were to be reviewed by the Commission on a case-by-case basis, considering the possible benefits and competitive impact of the proposed cross-ownership. The Commission based this action on its conclusion that joint ownership of local stations offered significant efficiencies that could enhance programming diversity, strengthen service, and promote competition; and that the diversity and competition-based concerns that had prompted enactment of the rule in 1970 had been substantially alleviated by the tremendous growth and availability of media outlets in local markets.[119]

In 1992, the Commission noted that its experience under this waiver policy had demonstrated that joint ownership of radio and television stations in a market "can result in cost savings of 10 percent or more."[120] These savings, the Commission observed, resulted from

---

[118] See TV-Radio Cross-Ownership, supra, 4 FCC Rcd 1741.

[119] Id. at 1743. The Commission cited not only a 73% increase in television stations and a 502% increase in all broadcast stations, radio and television, but also a tenfold increase in cable subscriptions, increases in MDS and VCR penetration, and the "important contributions" of the print media to diversity and economic competition in local markets. The Commission based its decision, however, "primarily on the increased availability of traditional broadcast outlets in local markets." Id.

[120] Radio Ownership, supra, 7 FCC Rcd at 2775. Specifically, the Commission stated that

> "[i]n recent cases for waivers of [the one-to-a-market rule], applicants have demonstrated that joint operation of television and radio stations whose contours overlap can result in cost savings of 10 percent or more, regardless of market size. For example, in P-N-P Broadcasting, Inc., 4 FCC Rcd 5596 (1989), involving a small market broadcaster, the savings attributed to joint operation represented

sharing of facilities and services such as towers and transmitter buildings, studios and offices, business departments and managers, administrative and management services, accounting and legal services, and engineering backup staffs.[121]

CBS has long operated TV-AM-FM combinations in New York, Los Angeles, Chicago, and Philadelphia (all existing prior to 1970, and "grandfathered" at that time), and recently acquired, under the 1989 waiver policy, another such group in Minneapolis. The operations of these stations attest to the substantial advantages that cross-ownership can provide. CBS Owned radio and television stations enjoy significant cost savings by sharing various facilities and services. They frequently contribute to each other's programming in a number of ways, including, in the case of AM and television news operations, sharing information, materials, interviews and reports. At the same time, each of CBS's same-market television and radio stations has a distinct editorial policy, established by that station's local management. There is no reason that the substantial public benefits that the CBS stations enjoy due to their co-ownership, and the resulting service improvements that are passed on to the public, should not be far more broadly available.[122] In the event that the Commission is not prepared to rescind the one-to-a-

---

> better than 12 percent of the total costs of running the commonly owned television station [sic]. Similarly, in Tulsa 23, 5 FCC Rcd 727 (1990), involving a medium market operation, the applicants stated that the joint ownership would reduce the operating costs of the stations by approximately 10 percent." Id.

[121] Id. at 2775, n.90.

[122] The repeal of the "one-to-a-market" rule would permit, but not necessarily result in, an overall increase in same-market radio-television combinations. While some such combinations would undoubtedly form as a result of the rule's repeal, we note that there has been no clear trend toward such combinations. Indeed, the recent past has seen the departure from radio of several prominent communications companies that once operated radio-television combinations in major markets -- companies such as NBC, Metromedia and RKO General -- and the rise in their place of radio-only groups such as Westwood and Infinity.

market rule, CBS supports the alternative proposal to extend the policy of permitting radio-television cross-ownership beyond the top 25 markets to any market where 30 or more independently owned "voices" remain; and to permit radio-television cross-ownership in these circumstances as a matter of right, rather than pursuant to waiver. We also urge that the Commission consider reducing the minimum number of independent "voices" required for new radio-television combinations from 30 to 15. A local market with 15 independently owned broadcast outlets must necessarily be highly unconcentrated in all respects, especially since that market surely will have numerous non-broadcast voices as well.

Finally, in the event that the one-to-a-market rule is not repealed in its entirety, we strongly urge that whatever standard the Commission adopts for allowing such combinations be equally applicable to a television owner (or proposed owner) which also proposes to acquire the full complement of radio stations in a particular market allowed by the Commission's rules.[123] Likewise, in the event the television duopoly rule is relaxed, a broadcaster seeking to take advantage of such a liberalization should not be subject to more stringent standards because it already operates, or proposes to operate, one or more radio stations in that community. In our view, there is no reason why existing or proposed owners of radio-television combinations should have to overcome special regulatory hurdles in order to take advantage of the enhanced efficiencies made possible by the 1992 liberalization of the radio ownership rules, and of any relaxation of the television duopoly rule that may come out of this proceeding. Once again, we

[123] This is not presently the case. Thus, a television owner (or proposed owner) seeking to acquire more than one AM or FM station in a given market must now meet the Commission's five part case-by-case test for waiver of the one-to-a-market rule, even if the market in question would otherwise qualify for presumptive waiver under the top 25 market/30 voices test. See, Memorandum and Order on Reconsideration, Revision of Radio Rules and Policies, 7 FCC Rcd 6387, 6394, n.40 (1992).

believe that antitrust enforcement under the Clayton Act is more than sufficient to ensure that radio-television combinations within the parameters of the Commission's rules will not present any potential threat to diversity or competition.

CONCLUSION

Broadcast television faces formidable competitive challenges from its existing and emerging dual-revenue multichannel rivals. In this transformed marketplace, prophylactic structural limits on station ownership, unsupported by any demonstrable need grounded in competition policy, are anachronistic and unfair, and constitute obstacles to improvements in broadcast service that would redound to the benefit of the viewing public. The record furnishes abundant support for the Commission to repeal the national ownership rules and to repeal or relax significantly the local ownership and television-radio cross-ownership rules. CBS urges it to do so now.

Respectfully submitted,

CBS Inc.

By Howard F. Jaeckel

Howard F. Jaeckel

Richard H. Altabef

51 West 52nd Street
New York, New York 10019

By Mark W. Johnson /per HFJ

Mark W. Johnson
1634 I Street, N.W.
Washington, D.C. 20006

Its Attorneys

May 17, 1995